

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
1 THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947  
(302) 856-5257

July 20, 2011

Mr. Lee Lewis  
21100 Carey's Camp Road  
Millsboro, DE 19966

RE: *State of Delaware v. Lee Lewis*  
Defendant ID No. 1010008274 - (R-1)  
Submitted July 8, 2011

Dear Mr. Lewis:

On May 2, 2011, you filed a Motion for Post Conviction Relief pursuant to Superior Court Rule 61. ("Rule 61"). Your motion made conclusory claims of ineffective assistance of counsel, but nevertheless, the Court requested that your lawyer provide a Rule 61(g) affidavit and also allowed you to file a response. The Court also obtained a transcript of the guilty plea and sentencing. For the reasons stated herein, your motion is denied.

BACKGROUND

On March 23, 2011, you pled guilty to Carrying a Concealed Deadly Weapon (brass knuckles) and Failure to Stop at the Command of a Police Officer. You were aware that the State sought a minimal sentence of sixty days as a habitual offender on the weapons offense. Because you had some personal business to attend to, sentencing was moved to March 31, 2011, with everyone's consent.

On March 31, 2011, the Court found the recommendation to be reasonable and sentenced you to sixty days on the weapons offense as a habitual offender and to probation on the failure to stop offense. The only difference in the recommended sentence and the sentence imposed was that the recommendation was for sixty days at the Level 4 Violation of Probation Center where you would have had to work the road crew. Level 4 can not be imposed under the habitual offender statute, hence the sixty days at Level 5.

## RULE 61 ALLEGATIONS

You made three claims of ineffective assistance of counsel: (1) a breach of client confidentiality when your lawyer shared personal information with the prosecutor [no specifics alleged]; (2) failure to file motions [no specifics alleged]; and (3) failure to subpoena witnesses [no specifics alleged].

Pursuant to *Strickland v. Washington*, 446 U.S. 608 (1984), in order to establish an ineffectiveness of counsel claim, the defendant must prove objectively that his lawyer committed professional errors or there were omissions that actually prejudiced the defendant.

In your lawyer's Rule 61(g) affidavit he noted that the allegations are conclusory, but responded as best he could based upon his pre-plea communications with the you.

First, your lawyer acknowledged that in the "give and take" of plea negotiations he told the prosecutor why the defense believed the State's case had certain weaknesses. Your lawyer disputed that his communications were a breach of the attorney-client relationship.

Second, your lawyer stated that he does not know what motions he could have filed. The police had lawful grounds to stop the vehicle you were driving. The dash-mounted camera in the police car recorded the attempt to stop you and the subsequent flight and chase. When eventually stopped, you had multiple capiases for your arrest. All of the above permitted the search in which the brass knuckles were found. In sum, there was no basis for a suppression motion.

Third, your only potential witness was your sister. You claim she would have testified that the vehicle was hers and the brass knuckles did not belong to you. Your lawyer reported she was not subpoenaed because she was going to appear voluntarily to help you.

In your Rule 61(g) response you stated the breach of confidentiality was based on counsel using your custody or care of your two-year old daughter in the plea discussions. The Court does not find that he breached any confidential communications when he argued for your position based upon family responsibilities.

You argue that the brass knuckles should have been suppressed because your fingerprints were not on them. You are wrong. The brass knuckles would have come into evidence and would not have been suppressed. The jury would have had to decide if possession had been proven beyond a reasonable doubt.

Finally, you stated that it was your sister who did not get a subpoena, but you did not dispute your lawyer's report that she agreed to come voluntarily.

Thus, based on the above, you have failed to establish that your lawyer committed professional mistakes. You have shown no prejudice, especially when considering the evidence he reviewed with you.

The transcripts of the plea colloquy and sentencing clearly establish that your decision to admit guilt was made knowingly, voluntarily and intelligently. You were satisfied with your lawyer and had no complaints. Neither your lawyer nor anyone else forced you to plead guilty.

Upon consideration of the guilty plea paperwork, the transcripts, and the Rule 61(g) affidavit, the Court finds you have not proven your lawyer was ineffective. Additionally, the Court finds that you made your own decision to plead guilty and did so intelligently and knowingly.

The Rule 61 motion is DENIED.

SO ORDERED

Yours very truly,

/s/ T. Henley Graves

THG:pac

cc: Prothonotary

cc: Melissa Lofland, Esquire, Department of Justice

Robert Robinson, Jr., Esquire, Office of the Public Defender